



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

ACE Insurance Company of Texas

**MFDR Tracking Number**

M4-17-0767-01

**Carrier's Austin Representative**

Box Number 15

**MFDR Date Received**

November 17, 2016

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "Memorial Compounding Pharmacy has made numerous attempts to have the attached bills processed. Broadspire has yet to approve or deny our bills. Broadspire has not sent Memorial Compounding Pharmacy any type of correspondence, EOB, or payments on any of the attached bills."

**Amount in Dispute:** \$7,935.69

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Payment has been disputed as the medications were not preauthorized."

**Response Submitted by:** Broadspire

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 20, 2015	Pharmacy Services – Tramadol	\$623.73	\$0.00
October 20, 2015 – November 15, 2015	Pharmacy Services – Baclofen	\$1,218.66	\$0.00
February 29, 2016 – March 31, 2016	Pharmacy Services – Baclofen	\$1,827.99	\$1,827.99
April 14, 2016 – July 28, 2016	Pharmacy Services – Compound	\$4,265.31	\$4,265.31

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.

3. 28 Texas Administrative Code §133.200 sets out the insurance carrier's procedures for receipt of medical bills.
4. 28 Texas Administrative Code §133.210 sets out the procedures for medical documentation.
5. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
6. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
7. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
8. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
9. The submitted documentation does not include explanations of benefits presented to the requestor prior to medical fee dispute resolution.

### **Issues**

1. What are the services in dispute?
2. Did Memorial Compounding Pharmacy (Memorial) waive the right to medical fee dispute resolution for dates of service October 20, 2015 and November 15, 2015?
3. Did ACE Insurance Company of Texas (ACE) reduce or deny the disputed services not later than the 45<sup>th</sup> day after receiving the medical bills?
4. Is Memorial entitled to reimbursement for the disputed services?

### **Findings**

1. Memorial is seeking reimbursement of the following:
  - Tramadol 100%, NDC 38779237409, 60 grams (bulk powder), dispensed on October 20, 2015
  - Baclofen 100%, NDC 38779038809, 60 grams (bulk powder), dispensed on October 20, 2015; November 15, 2015; February 29, 2016; March 15, 2016; and March 31, 2016
  - Compound, dispensed on April 14, 2016; April 28, 2016; May 15, 2016; May 30, 2016; June 14, 2016; June 28, 2016; and July 28, 2016 with the following ingredients:
    - Ethoxy Diglycol, NDC 38779190301, 4.2 ml
    - Amitriptyline HCl, NDC 38779018904, 1.8 gm
    - Amantadine HCl, NDC 38779041105, 3.0 gm
    - Baclofen, NDC 38779038809, 5.4 gm
    - Bupivacaine HCl, NDC 38779052405, 1.2 gm
    - Gabapentin USP, NDC 38779246109, 3.6 gm
    - Versapro Cream, NDC 38779252903, 40.8 gm
2. 28 Texas Administrative Code §133.307(c)(1) states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

The dispute in question includes dates of service October 20, 2015 and November 15, 2015. The request for medical fee dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) Section on November 17, 2016. This date is later than one year after the dates of service in question. Review of the submitted documents finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The division concludes that Memorial has failed to timely file a dispute for dates of service October 20, 2015 and November 15, 2015 with the division's MFDR Section. For this reason, Memorial has waived the right to medical fee dispute resolution for these dates of service. The division will consider only dates of service February 29, 2016 through July 28, 2016 for this dispute.

3. Memorial contends that “Broadspire has yet to approve or deny our bills. Broadspire has not sent Memorial Compounding Pharmacy any type of correspondence, EOB, or payments on any of the attached bills.”

Texas Labor Code Sec. 408.027(b), requires ACE to pay, reduce, or deny the disputed services not later than the forty-fifth day after it received the pharmacy bill from Memorial. Corresponding 28 Texas Administrative Code §133.240(a) also required ACE to take **final action** by issuing an explanation of benefits not later than the forty-fifth day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

- (6) Final action on a medical bill—
- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
  - (B) denying a charge on the medical bill.

The following evidence supports that pharmaceutical bills for the services in dispute were received by Broadspire:

- A fax confirmation dated March 10, 2016 for date of service February 29, 2016 submitted to Broadspire
- A fax confirmation dated March 23, 2016 for date of service March 15, 2016 submitted to Broadspire
- A fax confirmation dated April 6, 2016 for date of service March 31, 2016 submitted to Broadspire
- A USPS Return Receipt, tracking number 7015 3430 0000 0996 6474, signed on April 27, 2016 for date of service April 14, 2016, indicating delivery to Broadspire
- A fax confirmation dated May 3, 2016 for date of service April 28, 2016 submitted to Broadspire
- A fax confirmation dated May 17, 2016 for date of service May 15, 2016 submitted to Broadspire
- A USPS Return Receipt, tracking number 7014 2120 0004 2486 1576, signed on June 13, 2016 for date of service May 30, 2016, indicating delivery to Broadspire
- A USPS Return Receipt, tracking number 7014 2120 0004 2486 2788, signed on July 5, 2016 for date of service June 14, 2016, indicating delivery to Broadspire
- A USPS Return Receipt, tracking number 7014 2120 0004 2486 3457, signed on July 20, 2016 for date of service June 28, 2016, indicating delivery to Broadspire
- A USPS Return Receipt, tracking number 7014 2120 0004 2486 0074, signed on August 15, 2016 for date of service July 28, 2016, indicating delivery to Broadspire.

Based on available information, the division finds that Broadspire is an agent of ACE for this claim. 28 Texas Administrative Code §133.210(e) states:

It is the insurance carrier's obligation to furnish its agents with any documentation necessary for the resolution of a medical bill. **The Division considers any medical billing information or documentation possessed by one entity to be simultaneously possessed by the other** [emphasis added].

Possession of the pharmacy bill by Broadspire is therefore considered to be simultaneously possessed by ACE. Therefore, ACE was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45<sup>th</sup> day after it received the pharmacy bill from Memorial, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45<sup>th</sup> day** [emphasis added] after the insurance carrier received a complete medical bill...

(e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:

(1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the division's laws and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that ACE took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that ACE timely presented **any** defenses to Memorial on an explanation of benefits as required under 28 Texas Administrative Code §133.240.

Failure to provide evidence that ACE timely issued an explanation of benefits to Memorial creates a waiver of the defenses that Broadspire raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that ACE raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C and Chapter 134, Subchapter F, the division concludes that the defenses presented in Broadspire's position statement shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

4. 28 Texas Administrative Code §134.503 applies to the services in dispute and states, in pertinent part:

(c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:

(1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:

(A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;

(B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;

(C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or

(2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:

(A) health care provider; or

(B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compounds in dispute were billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

For dates of service February 29, 2016; March 15, 2016; and March 31, 2016, reimbursement is calculated as follows:

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Baclofen Powder 100%	38779038809 Generic	\$35.63	60 gm	$\$35.63 \times 60.0 \times 1.25 = \$2,672.25$	\$609.33	\$609.33

The total reimbursement for these dates of service is \$1,827.99.

For dates of services April 14, 2016; April 28, 2016; May 15, 2016; May 30, 2016; June 14, 2016; June 28, 2016; and July 28, 2016, reimbursement is calculated as follows:

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula \$134.503(c)(1)	Billed Amt \$134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Ethoxy Diglycol	38779190301 Generic	\$0.342	4.2 ml	$0.342 \times 4.2 \times 1.25 = \$1.80$	\$1.44	\$1.44
Amitriptyline HCl	38779018904 Generic	\$18.24	1.8 gm	$18.24 \times 1.8 \times 1.25 = \$41.04$	\$31.63	\$31.63
Amantadine HCl	38779041105 Generic	\$24.225	3.0 gm	$24.225 \times 3.0 \times 1.25 = \$90.84$	\$38.46	\$38.46
Baclofen Powder	38779038809 Generic	\$35.63	5.4 gm	$35.63 \times 5.4 \times 1.25 = \$240.50$	\$184.68	\$184.68
Bupivacaine HCl	38779052405 Generic	\$45.60	1.2 gm	$45.60 \times 1.2 \times 1.25 = \$68.40$	\$48.02	\$48.02
Gabapentin USP	38779246109 Generic	\$59.85	3.6 gm	$59.85 \times 3.6 \times 1.25 = \$269.33$	\$188.10	\$188.10
Versapro Cream	38779252903 Brand	\$3.20	40.8 gm	$3.20 \times 40.8 \times 1.09 = \$142.31$	\$102.00	\$102.00
Compounding Fee	NA	NA	NA	\$15.00	\$15.00	\$15.00
					Total	\$609.33

The total reimbursement for these dates of services is \$4,265.31. The total reimbursement for the disputed services is \$6,093.30. This amount is recommended.

### **Conclusion**

For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$6,093.30.

### ***ORDER***

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The division hereby ORDERS the respondent to remit to the requestor the amount of \$6,093.30, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### **Authorized Signature**

\_\_\_\_\_  
Signature

Laurie Garnes  
Medical Fee Dispute Resolution Officer

February 24, 2017  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**